

## ATTACHMENT 1

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### VEHICLE TOWING AND SECURED STORAGE SERVICES AGREEMENT

(Parties: City of El Monte and [REDACTED])

THIS VEHICLE TOWING SECURED STORAGE SERVICES AGREEMENT ("AGREEMENT") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015 (the "Effective Date") by and between the City of El Monte, a municipal corporation located in the County of Los Angeles, State of California, hereinafter referred to as "CITY" and \_\_\_\_\_, a \_\_\_\_\_ corporation, hereinafter referred to as "CONTRACTOR."

**WHEREAS**, CITY desires engage the services of \_\_\_\_\_ (\_\_\_\_\_) vehicle towing companies as independent contractors for the purposes of satisfying the vehicle towing and secure storage needs of the El Monte Police Department ("EMPD") for third-party vehicles designated for towing and impound by the EMPD pursuant to Vehicle Code Sections 14602.6 and 14607.6 or which otherwise come into the possession and control of the EMPD in the course of the EMPD's law enforcement and public safety operations; and

**WHEREAS**, CITY solicited proposals from qualified vehicle towing companies which included, but was not limited to, CONTRACTOR; and

**WHEREAS**, based on CONTRACTOR's qualifications and experience, it was determined by CITY that CONTRACTOR offers an optimal combination of qualities that provide the CITY with the best value for the services required; and

**WHEREAS**, this AGREEMENT applies only to vehicles towed and/or stored at the request of the EMPD; and

**WHEREAS**, CITY shall request vehicle towing service by CONTRACTOR on a rotation/alternate basis between CONTRACTOR and an additional vehicle towing company also servicing CITY;

**WHEREAS**, the El Monte City Council ("City Council"), at a regularly scheduled meeting of \_\_\_\_\_ 2015 approved the execution of this Agreement under Agenda Item No. \_\_\_\_\_.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and conditions hereinafter contained, CITY and CONTRACTOR agree as follows:

#### **Section 1. DEFINITIONS**

- A. The term "CITY" shall refer to the City of El Monte, and its duly authorized employees, agents, assignees, or designees.
- B. The term "CONTRACTOR" shall refer to \_\_\_\_\_ and its duly authorized employees, agents, assignees, or designees.
- C. The term "AGREEMENT" shall refer to the Vehicle Tow Service Franchise Agreement entered into by and between the CITY and CONTRACTOR.

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- D. The term "POLICE DEPARTMENT" shall refer to the CITY's Police Department.
- E. The term "CONTRACT ADMINISTRATOR" shall refer to \_\_\_\_\_.
- F. The term "VEHICLE CODE" shall refer to the State of California Vehicle Code.

### Section 2. SCOPE OF WORK, TERM OF AGREEMENT AND OPTION TO RENEW

- A. Except as otherwise provided elsewhere in this Agreement, CONTRACTOR agrees to performance all of the services and tasks set forth in the certain proposal entitled \_\_\_\_\_ and dated \_\_\_\_\_ which is attached and incorporated hereto as Exhibit \_\_\_\_\_ (hereinafter, the "Approved Scope of Work").
- B. The initial term of this AGREEMENT shall be for a total period \_\_\_\_\_ (\_\_\_\_\_) years commencing from the Effective Date (hereinafter, the "Term").
- C. The Term may be extended for a maximum of \_\_\_\_\_ (\_\_\_\_\_) extension terms at the option of the CITY, provided that CITY provides the CONTRACTOR with written notice of CITY's intent to exercise CITY's options to extend the term of the AGREEMENT no less than thirty (30) days prior to the expiration of the Term or any prior extension term. In the event CITY exercises its options to extend this AGREEMENT, all terms, conditions, and provisions of this AGREEMENT shall remain in effect and govern the duties, responsibilities, and liabilities of the parties hereto.

### Section 3. SUMS PAYABLE TO CITY

- A. CONTRACTOR hereby agrees to pay to CITY that amount of fees in accordance with VEHICLE CODE Section 12110 which provides that *"a fee in connection with the award of a franchise for towing vehicles on behalf of that public entity . . . shall not exceed the amount necessary to reimburse the public entity for its actual and reasonable costs incurred in connection with the towing program."*
- B. Except as otherwise provided herein, CONTRACTOR shall pay to CITY the sum of One Hundred and Twenty-Five (\$125) per vehicle (the "Franchise Rate") for the towing and/or storage by CONTRACTOR of vehicles impounded by the EMPD pursuant to VEHICLE CODE Sections 14602.6 and 14607.7 or which otherwise come into the possession and control of the EMPD in the course of its law enforcement and public safety operations. The parties acknowledge, understand and agree that the \$125 per vehicle fee represents a reasonable estimate of the actual and reasonable costs incurred by CITY per vehicle with respect to the performance of the tasks required to administer and enforce CITY's vehicle towing program and effort. CITY reserves the right to increase the amount of the Franchise Rate once each year during the initial term of this Agreement and any extension term following the first anniversary of the Effective Date. The Franchise Rate may not be increased by an amount that exceeds five percent (5%) of the current Franchise Rate.
- C. Within fifty (15) days from the conclusion of each month, CONTRACTOR shall remit all sums owed to CITY for vehicles referred to CONTRACTOR by CITY for towing and/or storage during the recently concluded month.
- D. All payments made pursuant to this AGREEMENT shall be made payable to the "City of El Monte" and directed to the attention of the CONTRACT ADMINISTRATOR and shall not be

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made contingent on any payments due or paid to CONTRACTOR for the actual tow and/or storage of any vehicles. With regard to vehicles impounded pursuant to VEHICLE CODE Sections 14602.6 and 14607.6, the actual source of storage fee payments shall have no bearing on CONTRACTOR's duty to pay CITY under this AGREEMENT and shall include proceeds that CONTRACTOR may receive from an auction or other sale of a forfeited vehicle.

- E. If the deadline falls on a day in which the City is closed for business the deadline shall extended to close of business of the next day immediately following in which the City is open for business.
- F. In the event CONTRACTOR fails to timely pay any sums due the CITY, such failure shall constitute a default under this Agreement and such default must be cured within the applicable cure period set forth under Section 6.J, below. In addition, CITY will assess a late fee of one hundred (\$100) which shall become immediately due and payable along with the delinquent sums. If all outstanding delinquent sums, as well as the late fee, remain unpaid after the conclusion of the applicable cure period, interest on the unpaid sums and the late fee will accrue simple interest at a rate equal to the lesser of the following until paid in full: Twelve percent (12%) per annum; or the maximum rate permitted by applicable law.
- G. In addition to the late fees and interest accrual set forth above, failure to timely remit payments due the CITY shall constitute cause for the immediate suspension and/or termination of this Agreement as provided under Section 6.J., below.
- H. CONTRACTOR shall be required to maintain a business license with the CITY at all times during the term of this Agreement and any extension term and the duty to pay any and all business license taxes due the CITY for CONTRACTOR's business activities. CONTRACTOR's failure to maintain a business license and/or pay any and all business license taxes shall also constitute grounds from the suspension and/or termination of this Agreement and CONTRACTOR acknowledges, understands and agrees that it shall also be responsible for the payment of any fines, penalties and/or later charges due under the El Monte Municipal Code arising out of its failure to maintain a business license and/or pay any and all business license taxes.

### **Section 4. RATES FEES AND OTHER CHARGES CHARGED BY CONTRACTOR TO VEHICLE OWNERS**

- A. Correspondence with CHP Approved Rates, Fees and Other Charges: With respect to non-City vehicles which are referred to CONTRACTOR by CITY pursuant to this Agreement for towing or storage, CONTRACTOR may not impose any rates, fees or other charges upon the owners of such vehicles as condition for their release other than those varieties of rates, fees or other charges which CONTRACTOR is authorized to charge under that certain agreement between CONTRACTOR and the State of California, Department of California Highway Patrol ("CHP") entitled "Tow Service Agreement" which is dated as of \_\_\_\_\_. With respect to non-City vehicles which are referred to CONTRACTOR by CITY pursuant to this Agreement for towing or storage, CONTRACTOR may not impose any rates, fees or other charges upon the owners of such vehicles as condition for their release at rate levels or in amounts that exceed those expressly approved by the CHP for the tow district that includes the territorial boundaries of the City of El Monte. CONTRACTOR shall have an ongoing duty and responsibility to ensure that the CITY is provided with a complete and up-to-date schedule of rates, fees and other charges as approved by the CHP along with true and correct documentation demonstrating that any and all rates, fees or other charges imposed by the CONTRACTOR have been approved by the CHP before being put into effect. Not less than fifteen (15) prior to putting any new, increased or otherwise adjusted rate, fee or other charge into effect, CONTRACTOR shall provide CITY with notice that it has been approved by the CHP along with documentation evidencing such approval. In the event CONTRACTOR ceases to be a party and signatory to a

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Tow Services Agreement with the CHP, CITY reserves the right to immediately terminate this Agreement upon the issuance of written notice to CONTRACTOR specifying the effective date of such termination. In the event CITY does not exercise its right to terminate the Agreement or delays the exercise of such right, rates, fees and other sums charges by CONTRACTOR shall remain the same as of the date of the most complete and up-to-date schedule of rates, fees and other charges provided to CITY which evidence all CHP approved rates, fees or other charges.

- B. The previous paragraph notwithstanding, even when tow and storage services are specifically requested by CITY, CONTRACTOR acknowledges that it shall charge vehicle owners only for its tow and storage services incurred pursuant to the terms and provisions of this AGREEMENT. At no time shall CONTRACTOR hold CITY liable for any tow or storage services incurred pursuant to and during the term of this AGREEMENT even when such services are requested by CITY. It is specifically acknowledged by CONTRACTOR that the vehicle owner shall be solely responsible for such charges.
- C. Posting of Rate Schedules:
  - 1. CONTRACTOR shall post and maintain a sign or signs which have been approved by the CONTRACT ADMINISTRATOR in a conspicuous place or places on CONTRACTOR's premises where owner re-claims his/her vehicle and in a location designated by the CONTRACT ADMINISTRATOR which gives notice of:
    - a. The approved "Rate Schedule" for tow and storage services under the AGREEMENT as set forth in Exhibit "B". If the approved Rate Schedule is modified or amended in accordance with subsection A., above, an updated Rate Schedule shall be posted by or before the date any adjusted rates, fees, charges, deposits or other sums charged take effect;
    - b. The method of payment(s) which are acceptable by CONTRACTOR which include credit cards and U.S. currency;
    - c. A written receipt shall be supplied by CONTRACTOR for the amount of payment received;
    - d. The telephone number and address of the CONTRACT ADMINISTRATOR; and
    - e. The address where a vehicle owner may address his/her complaints regarding CONTRACTOR's tow and/or storage services.

### **Section 5. CONTRACTOR'S RESPONSIBILITIES:**

#### **A. Compliance with Law:**

- 1. CONTRACTOR shall have and maintain throughout the entire term of this Agreement a valid CITY business license and shall, at all times, keep himself or itself fully informed of and shall, at all times, be informed of and shall comply with all Federal, State and County laws, Municipal Code provisions, Ordinances and Regulations, and all VEHICLE CODE sections which are in force or become effective during the term of the AGREEMENT which, in any manner, affect tow services or the storage of vehicles.
- 2. CONTRACTOR warrants, represents and agrees that all persons seeking the release of their vehicles from CONTRACTOR shall not be subject to unlawful or arbitrary discrimination, including discrimination based upon sex, marital status, race, color, religion, ancestry, national origin, physical disability, sexual orientation and domestic partnership status and that CONTRACTOR agrees that it will conduct all its business activities pursuant to this AGREEMENT in accordance with the foregoing policy.

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### B. Personnel:

1. Except as otherwise provided under the Scope of Work, CONTRACTOR shall retain an adequate number of trained and properly licensed personnel assigned to perform the work described in this AGREEMENT. All work performed by CONTRACTOR and CONTRACTOR's officers, employees agents shall be performed in compliance with VEHICLE CODE Sections 12520 and 12804.9.
2. CONTRACTOR agrees to provide a copy of this AGREEMENT to each of CONTRACTOR'S employees and obtain each employees' signature on this AGREEMENT on the Acknowledgment form set forth below.

#### ACKNOWLEDGMENT

BY SIGNING THIS ACKNOWLEDGMENT, EMPLOYEE ACKNOWLEDGES THAT HE OR SHE UNDERSTANDS AND AGREES TO BE BOUND BY ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT AND THAT ANY VIOLATION OF SAID TERMS AND PROVISIONS OF THIS AGREEMENT MAY RESULT IN IMMEDIATE TERMINATION OF MY EMPLOYMENT.

\_\_\_\_\_ Employee's Signature

3. CONTRACTOR shall retain all employee-executed copies of this AGREEMENT and provide the same to the CITY upon request.
4. In the event CONTRACTOR fails for any reason to immediately terminate an employee who has violated the terms of this AGREEMENT, then CITY reserves the right to take CONTRACTOR out of rotation and request tow and/or storage services from the other tow services company specified on the Rotation List which will be provided to CONTRACTOR by CITY at time of execution of this AGREEMENT.

### C. Notice to Vehicle Owners and/or Department of Justice

1. CONTRACTOR shall timely notify the registered or legal owner of all vehicles towed and/or stored pursuant to this AGREEMENT and in accordance with all relevant provisions set forth in the VEHICLE CODE.
2. If the registered or legal owner of a vehicle is unable to be located by CONTRACTOR, then CONTRACTOR shall timely notify the Department of Justice in accordance with all relevant provisions set forth in the VEHICLE CODE.
3. It shall be CONTRACTOR's sole and exclusive responsibility to timely notify each and every owner of vehicles towed and/or stored pursuant to this AGREEMENT of the costs incurred from its services and payable by the vehicle owner.

### C. Lien Sales:

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1. In the event a vehicle is not claimed by its owner after CONTRACTOR duly notifies the registered or legal owner pursuant to the relevant provisions set forth in the VEHICLE CODE, CONTRACTOR shall be able to facilitate or conduct a lien sale pursuant to VEHICLE CODE Sections 22851 et seq.
2. Any and all lien sales performed by CONTRACTOR shall be done in strict compliance with all applicable laws.
3. CONTRACTOR shall indemnify, defend and hold harmless, the CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers from any and all liability arising out of any lien sale that CONTRACTOR facilitates or conducts.

### E. Towing Operations:

#### 1. Scope of Responsibility:

It shall be CONTRACTOR's responsibility to perform the following at no cost to CITY:

- a. Tow and store vehicles as requested by CITY including, but not limited to, the following:
  1. Vehicles taken into custody by the POLICE DEPARTMENT;
  2. Any and all CITY-owned vehicles requested to be towed and/or stored by the POLICE DEPARTMENT, including CITY owned vehicles up to forty (40) miles round-trip beginning at the departure location of the tow truck;
  3. Vehicles abandoned in public places or on public property or private property within the jurisdiction of CITY so long as requested to be towed and/or stored by the POLICE DEPARTMENT pursuant to their enforcement powers of the law;
  4. Vehicles seized and impounded pursuant to VEHICLE CODE Sections 14602.6 and 14607.6; and
  5. Vehicles requested to be towed and/or stored pursuant to CITY's Vehicle Abatement Program as more fully described below.
- b. Remove all debris resulting from vehicle accidents; and
- c. Perform all necessary work preliminary to towing vehicles such as removing vehicles from ditches, righting vehicles, separating entangled vehicles, disconnecting drive shafts, and other such work as shall be required to enable the towing of certain vehicles.

#### 2. Response Time:

- a. CONTRACTOR shall respond immediately and at any and all times to requests for tow services of vehicles when such requests for tow services are made by the POLICE DEPARTMENT.
- b. The time period within which CONTRACTOR shall respond to requests for service by the POLICE DEPARTMENT by providing a tow vehicle at the response location shall be not greater than fifteen (15) minutes from the time of such requests.
- c. Upon receiving requests for tow service by the POLICE DEPARTMENT, CONTRACTOR shall record the time such requests are made and the time at which a tow vehicle is dispatched and maintain such record for at least six (6) months.
- d. In the event CONTRACTOR is unable to respond to a request by the POLICE DEPARTMENT within the fifteen (15) minute time period, CONTRACTOR or its



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dispatcher shall notify the individual requesting the tow service and inform him/her that CONTRACTOR is unable to respond timely to the request and provide the reason therefor and an estimated time for arrival.

- e. If CONTRACTOR is unable to respond within the fifteen (15) minute time period due to conditions beyond its control, CITY shall have the right to request tow services from another tow company specified on the rotation list. If CONTRACTOR is unable to respond within the fifteen (15) minute time period due to any other reason, CITY shall have the right at its sole option to eliminate CONTRACTOR from the Rotation List until such time as CONTRACTOR notifies the CONTRACT ADMINISTRATOR that it is able to respond timely to CITY's tow service requests.
  - f. In the event CONTRACTOR receives more than one (1) tow service request from either the POLICE DEPARTMENT within the same time period, CONTRACTOR shall respond to the first request then respond to the second request unless the second request involves a vehicle accident where the disabled vehicles are interrupting the flow of traffic or poses a threat to the safety of others.
3. Inventory:
- a. A detailed written inventory of all personal property in any and all vehicles towed and/or stored and/or impounded by CONTRACTOR shall be completed by the POLICE DEPARTMENT prior to the time of towing and/or storing the vehicle by the CONTRACTOR. The towing operator of CONTRACTOR shall complete and sign the appropriate section of said inventory form. A copy of the fully completed inventory form shall be given to the towing operator employed by CONTRACTOR who shall in turn give it to CONTRACTOR who shall retain it for as long as the vehicle is in CONTRACTOR's possession and control.
  - b. Under no circumstances may a vehicle and/or personal property located in a vehicle be released by CONTRACTOR to the vehicle owner or his/her designated representative without the express written permission from the POLICE.
  - c. If at any time an item of personal property is removed from a stored vehicle and placed in another location, CONTRACTOR shall prepare a receipt of said item, place a copy of said receipt in the stored vehicle, and provide a copy of said receipt to the POLICE DEPARTMENT.
  - d. CONTRACTOR agrees to indemnify, defend and hold harmless CITY and CITY'S elected and appointed officials, officers, employees, agents and volunteers harmless from any damage to vehicles and/or loss or damage to personal property located inside the vehicles during CONTRACTOR's custody and possession of said vehicles.

### F. Storage Operations:

#### 1. Scope of Responsibility:

- a. CONTRACTOR shall be responsible for all vehicles and their contents stored by CONTRACTOR including, but not limited to, personal property and vehicle accessories and equipment. CONTRACTOR shall be responsible for protecting these items against loss or damage from fire, theft, weather or any other causes.
- b. CONTRACTOR shall provide insurance coverage for any damage or loss to vehicles or personal property located inside any vehicles for the time period within which CONTRACTOR has possession of said vehicles.
- c. All vehicles taken into custody and stored by CONTRACTOR shall be stored without charge or cost to the CITY including those vehicles owned by CITY.
- d. Should any vehicles towed and/or stored by CONTRACTOR at the request of the POLICE DEPARTMENT appear suspicious due to altered license plates or vehicle

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- identification numbers, CONTRACTOR shall immediately upon tow or storage advise the POLICE DEPARTMENT of the suspicious vehicles.
- e. CONTRACTOR shall not permit any unauthorized person(s) into the area in which vehicles, which are towed or stored pursuant to this AGREEMENT, are kept. CONTRACTOR shall be fully and exclusively responsible for any items missing from these stored vehicles and for any consequences resulting from the entrance of any individual not authorized by CONTRACTOR to enter into said storage area.
  - f. CONTRACTOR shall take all actions and precautions necessary to protect all vehicles and their components such as their engines, trunks, and interior areas, from natural elements by closing the windows, doors, trunk lids, hoods, and, if necessary, covering the vehicle or parts thereof exposed to the weather with plastic, canvas, or other waterproof covering.
  - g. CONTRACTOR shall park all stored and/or impounded vehicles in such a manner so as to prevent any damage to them during the movement or the parking of other vehicles.
  - h. In the event of loss or damage to a stored vehicle, its accessories and equipment, or personal property contained in the vehicle while said vehicle is in the custody of CONTRACTOR, CONTRACTOR and not CITY shall be solely and exclusively responsible to the registered or legal owner for any and all losses and/or damage.
  - i. Personal property contained in vehicles stored by CONTRACTOR shall not be disposed of to defray any charges for the towing or storage of said vehicles. In the event the owner of said vehicle fails to contact CONTRACTOR within thirty (30) days after the date of notice to the vehicle owner of impound or storage in accordance with the provisions of the VEHICLE CODE, the vehicle, its accessories and equipment, and personal property shall be disposed of in accordance with all State, County, and Municipal regulatory requirements.
  - j. CONTRACTOR shall comply with the requirement set forth in VEHICLE CODE Section 10652 regarding the reporting of stored vehicles in excess of thirty (30) days to the Department of Justice.
  - k. Upon the request of the vehicle owner(s) or his/her authorized representative; CONTRACTOR shall not release the vehicle and/or the owner(s) personal property without the express written consent of the POLICE DEPARTMENT.
  - l. Pursuant to a request by the vehicle owner(s) or his/her authorized representative for release of the vehicle and/or the owner(s) personal property and upon the express written consent of such release by the POLICE DEPARTMENT, CONTRACTOR shall release the vehicle and/or the owner(s) personal property at CONTRACTOR's primary storage facility during normal business hours which are between the hours of \_\_\_\_\_ to \_\_\_\_\_ Mondays through \_\_\_\_\_, except holidays. Said release shall be conditioned upon the showing of proof of proper identification and authority by the owner or his/her designated representative. The removal of personal property items only from a stored vehicle should be released pursuant to this provision without reference to any costs or charges pending because of the tow or storage of said vehicle. Should the owner or his/her authorized representative request the release of the vehicle and/or personal property after normal business hours, there shall be an after-hours fee imposed by CONTRACTOR on the owner or his/her authorized representative in the amount of \_\_\_\_\_ (\$\_\_\_\_\_).
  - m. With regard to any and all vehicles impounded and stored by CONTRACTOR as evidence of a crime or which are involved in a pending investigation, CONTRACTOR shall take all reasonable steps to safeguard and protect the vehicle and all of its contents and to take all reasonable precautions required by the POLICE DEPARTMENT to avoid damage to any evidence such as fingerprints or stains contained in or on any and all stored vehicles and their parts.
  - n. Vehicles taken into custody and stored by CONTRACTOR as evidence of a crime or which are involved in a pending investigation shall be locked securely and stored in a



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covered area separate from all other stored vehicles and which is protected against entry by unauthorized persons. CONTRACTOR shall be fully and exclusively responsible for any items missing from these stored vehicles and for the entrance of any individual not authorized by CONTRACTOR to enter into said storage area.

### 2. Storage Facilities:

- a. Except as otherwise provided in the Scope of Work: (i) all vehicles impounded or taken into custody by CITY must be stored by CONTRACTOR in areas that are enclosed by substantial wire fences or walls that have gates or doors which lock; (ii) fences or wall enclosures shall be not less than six (6) feet in height and shall have not less than one (1) gate or door of adequate width and height; and (iii) the bottom edge of the enclosure structure shall not be more than two (2) inches above the parking surface of the enclosed area. All fence or wall enclosures shall be maintained in good order throughout the term of this AGREEMENT. In the event said fences or walls are damaged in any way, CONTRACTOR shall repair said fences or walls within twenty four (24) hours from the time of the occurrence of any damage to ensure proper protection of the stored vehicles.
- b. The CONTRACT ADMINISTRATOR or his designee reserves the right to implement and modify any security requirements should it become necessary in order to comply with local conditions.
- c. The CONTRACT ADMINISTRATOR or his designee reserves the right to inspect CONTRACTOR's vehicle storage facility at its sole discretion and at any time without notice to CONTRACTOR to ensure that CONTRACTOR maintains its facility in compliance with the requirements set forth herein.
- d. CONTRACTOR's storage facility shall comply with all zoning and other ordinance requirements of CITY.
- e. CONTRACTOR shall provide a primary storage site within five (5) miles of the territorial boundaries of the CITY that shall provide enough space to maintain a capacity of one hundred (100) vehicles outside on a level and unpaved surface.

### 3. Storage Facility Hours of Operation:

- a. CONTRACTOR's storage facility shall be open and supervised from the hours of \_\_\_\_ a.m. to \_\_\_\_ p.m., Mondays through \_\_\_\_\_, except holidays, and shall have a responsible person available on an on-call basis twenty four (24) hours per day, seven (7) days per week who is available to release vehicles or personal property to the rightful owner or the owner's representative.

### G. Location and Maintenance of Premises:

1. CONTRACTOR shall maintain and provide a place of business and primary storage facility within five (5) miles of the territorial boundaries of CITY, for vehicles stored pursuant to this AGREEMENT.
2. The primary storage facility shall be located at the same location as the business address. CONTRACTOR shall provide each and every address of any vehicle storage facilities that are located separate from CONTRACTOR'S primary place of business, and the distance from the primary place of business. The primary storage facility must be located within the City limits and vehicles towed in El Monte have to be stored in El Monte.
3. All landscaped areas of CONTRACTOR's premises shall be maintained in a neat and orderly condition with the landscape in a healthy state and free of weeds and litter.
4. The unpaved storage space shall be kept free of weeds, litter, debris, and any other materials, substances, or any automotive parts unless said parts are stored as evidence for the POLICE DEPARTMENT. CONTRACTOR shall comply with all municipal laws and ordinances and

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avoid contamination of soil with gasoline, oil, grease, or any other contaminating substance as specified by Federal, State, and County or municipal regulations.

5. All paved surface areas of CONTRACTOR's premises shall be in good repair without broken parts, holes, potholes, or litter. Any premises used for the storage of vehicles located within the jurisdictional boundaries of CITY shall be landscaped according to CITY rules and regulations.

### H. Abandoned Vehicle Abatement Program:

1. Under the terms of this AGREEMENT, CONTRACTOR will be responsible for providing the services of a driver and a tow truck for the removal of abandoned vehicles at such time they are requested by CITY.
2. CONTRACTOR shall not remove any abandoned vehicle without first being instructed to do so by an authorized representative of the POLICE DEPARTMENT.
3. Vehicles removed by CONTRACTOR pursuant to the Abandoned Vehicle Abatement Program shall be taken to a scrap yard or an auto dismantling yard and shall not thereafter be reconstructed or made operable. The payment for the salvage value for each removed abandoned vehicle shall be retained by CONTRACTOR as total and final payment for CONTRACTOR's costs and service in connection with the removal of said vehicle and CONTRACTOR shall receive no other compensation from the sale of salvaged or abandoned vehicles.
4. CITY shall indemnify, defend and hold CONTRACTOR harmless from any and all liability, claims, damages or demands arising out of and in connection with CITY's designation of vehicles to be towed pursuant to the Abandoned Vehicle Abatement Program or the willful misconduct of CITY, its officers or employees pursuant to CITY's designation of vehicles to be towed pursuant to the Abandoned Vehicle Abatement Program.

### I. Delegate or Assign:

1. CONTRACTOR shall give full attention to the faithful performance of the terms of this AGREEMENT. CONTRACTOR shall not assign or delegate any or all of the duties and responsibilities set forth in this AGREEMENT without the express and written prior approval by the City Council.
2. CONTRACTOR shall not, either legally or equitably, assign any of the monies payable to CONTRACTOR or CONTRACTOR's claims thereto under this AGREEMENT unless CONTRACTOR obtains prior written approval from the City Council.
3. Nothing contained in this AGREEMENT shall create any contractual relationship between any subcontractor and CITY.

### J. Termination / Suspension of Agreement.

1. CITY may terminate this Agreement and the franchise granted hereunder at any time for convenience and without cause by giving CONTRACTOR a minimum of sixty (60) days prior written notice of CITY's intent to terminate for convenience. The prior or concurrent issuance of a Default Notice by CITY or by CONTRACTOR pursuant to subsection D, below, shall not operate to prohibit or otherwise restrict CITY's ability to terminate this Agreement for convenience as provided herein.
2. CONTRACTOR may terminate this Agreement for convenience by giving CITY no less than ninety (90) days prior written notice of its intent to terminate this Agreement for convenience.

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CONTRACTOR shall continue to fully and faithfully perform under this Agreement pending the effective date of any termination for convenience by either CITY or CONTRACTOR.

### 3. Event of Default; Breach; Termination/Revocation of Franchise for Cause:

- a. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") shall occur. For all Events of Default, the Party alleging an Event of Default shall give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) the date by which the Event of Default shall be cured, which date shall not be later than the period allowed by applicable cure period set forth under subsections J.3.b.i through J.3.b.4, below. The Event of Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.
- b. CONTRACTOR shall cure the following types of Events of Defaults within the following time periods:
  1. Within twenty-four (24) hours of CITY's issuance of a Default Notice for any failure of CONTRACTOR to allow access to its facilities or to permit any inspection of any records, vehicles or equipment by CITY or CITY's authorized agents as may provided or otherwise authorized under this Agreement. CITY shall be under no obligation to entertain any request by CONTRACTOR for additional time to allow such access to its facilities or to permit any such inspections by CITY or CITY's authorized agents.
  2. Within forty (48) hours of CITY's issuance of a Default Notice for any failure of CONTRACTOR to timely pay any monetary sums owed to CITY at the time specified in this Agreement, including but not limited to any fees, interest, penal sums, reimbursements or late charges, provided, however that if the end of the 48-hour cure period falls on a day in which the CITY is not open for business, the deadline for remitting payment shall be extended to the close of business of the next day in which the CITY is open for business. Except as otherwise provided under the preceding sentence, CITY shall be under no obligation to entertain any request by CONTRACTOR for additional time to pay any monetary sums owed to the CITY.
  3. Within five (5) days of CITY's issuance of a Default Notice for any failure of CONTRACTOR to provide CITY or CITY's employees or agents with any reports, records, work product, records or information which CONTRACTOR is obligated to provide to CITY or CITY's employees or agents under this under the terms of this Agreement, the El Monte Municipal Code or any other applicable laws or regulations of the County of Los Angeles, the State of California or the federal government of the United States of America. Prior to the expiration of the 5-day cure period, CONTRACTOR may submit a written request for additional time to cure

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the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and a showing that the Event of Default cannot be reasonably cured within the 5-day cure period. The foregoing notwithstanding, CITY shall be under no obligation to grant additional time for the cure such an Event of Default under that exceeds seven (7) calendar days from the end of the initial 5-day cure period.

4. Within fourteen (14) calendar days of CITY's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of the 14-day cure period prescribed under this subsection, CONTRACTOR may submit a written request for additional time to cure such other Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the cure period. The foregoing notwithstanding, CITY shall be under no obligation to grant additional time for the cure of an Event of Default under this subsection that exceeds thirty (30) calendar days from the end of the initial 14-day cure period.
4. In addition to any other failure on the part of CONTRACTOR to perform any duty, obligation, service or task set forth under this Agreement; or the failure to timely perform or properly perform any such duty, obligation, service or task; or the failure to adhere to any performance standard or operating requirements set forth in this Agreement, an Event of Default on the part of CONTRACTOR shall include, but shall not be limited to the following specific varieties of defaults:
  - a. The initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or other similar proceedings as relates to CONTRACTOR, whether voluntary or involuntary; or
  - b. CITY's discovery that any representation of CONTRACTOR relating to CONTRACTOR's performance under this Agreement or any representation made by CONTRACTOR in the proposal it submitted to secure the award of this Agreement is false, misleading or erroneous in any material respect; or
  - c. CITY's discovery that contractor is in violation of or is not in compliance with any local, county, State or federal law regulating towing service operations or the operation of vehicle storage facilities, including but not limited to the provisions of Article 1 of Chapter 10 of Division 11 of the California Vehicle Code (Vehicle Code section 22650 et seq.) including but not limited to those operating standards, noticing requirements and service requirements set forth under Vehicle Code sections 22655.5(c), 22658, and 22699; or
  - d. Any assignment or transfer of all or any portion of CONTRACTOR's interest in this Agreement to any person or other legal entity (including but not limited to any person or other legal entity of which CONTRACTOR or CONTRACTOR's principals, shareholders or partners hold any type of ownership interest or other controlling interest) that is not first approved by the CITY in writing by action of the City Council; or
  - e. The sale, conveyance, transfer, hypothecation, leasing, subleasing or licensing to any person or other legal entity of all or any portion of the real property upon

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which CONTRACTOR's primary or secondary storage facilities are located that has not first been approved by the CITY in writing by action of the City Council, including but not limited to any sale, conveyance, transfer, leasing, subleasing or licensing to a person or other legal entity in which CONTRACTOR or CONTRACTOR's principals, shareholders or partners holder any type of ownership interest or controlling interest in the person or other legal entity to whom the real property is to be sold, conveyed, hypothecated, leased sublet or licensed).

CONTRACTOR shall have seven (7) days from the date of CITY's issuance of a Default Notice for any of the Events of Default enumerated under this subsection \_\_\_\_, above, to submit a written declaration signed by a duly authorized owner, principal or member of CONTRACTOR under penalty of perjury under the laws of the State of California rebutting the occurrence or veracity of the CITY's findings and/or determinations as set forth in the CITY's Default Notice. The CONTRACTOR's written declaration shall also be accompanied by any and all records, documentation or other tangible evidence which CONTRACTOR may wish to provide in support of its written declaration. CITY shall have sixty (60) calendar days from the date CONTRACTOR submits its written declaration and supporting material to render a final determination on the matter. During this 60-day period, CONTRACTOR shall provide such additional records, documentation or information as CITY may request to render its final determination as to whether or not any one or more of the Events of Default under this subsection has occurred. CITY's second written determination following the submission of CONTRACTOR's written declaration and supporting material shall be final and if CITY upholds its prior determination that any one or more of the Events of Default enumerated under this subsection has occurred, CITY may immediately declare CONTRACTOR to be in breach of this Agreement and pursue any and all remedies available to CITY under this Agreement, including but not limited to the termination of this Agreement. Similarly, if CONTRACTOR fails to timely submit any written objections to the CITY's Default Notice, such failure shall constitute a waiver of CONTRACTOR's right to object to the CITY's initial findings and determination and CITY reserves the right to immediately declare CONTRACTOR in breach of this Agreement and pursue any and all remedies available to CITY under this Agreement, including but not limited to the termination of this Agreement.

5. CITY shall have forty-five (45) calendar days from the date CONTRACTOR issues a Default Notice to cure any Event of Default, unless the Event of Default cannot reasonably be cured within the 45-day cure period. CITY shall be granted an additional forty-five (45) calendar days to cure any Event of Default upon CITY's written request for such an extension of time and CITY's demonstration that it has commenced the cure of the Event of Default. Alternatively, CITY may at any time during the initial 45-day cure period submit a written objection to the Default Notice along with any written declarations or other evidence which rebut or otherwise disprove the assertions in the CONTRACTOR's Default Notice. In the event CITY and CONTRACTOR are unable to agree as to whether or not an Event of Default on the part of CITY has occurred or whether CITY's proposed cure will adequately cure the Event of Default, CONTRACTOR shall either waive the Event of Default in writing or issue a written notice declaring the CITY to be in breach of the Agreement. CONTRACTOR shall have no authority to issue a breach notice to CITY prior to the earlier of the following: (i) the expiration of CITY's initial 45-day cure period or any additional 45-day cure period invoked by the CITY; or (ii) CITY's issuance of a written objection to the Default Notice. In the event CITY is in breach of this Agreement, CONTRACTOR's sole remedy shall be the suspension or termination of its performance under this Agreement.
6. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or



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service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

7. The rights and remedies available to CITY hereunder shall be in addition to and not a limitation of any rights and remedies available to CITY at law or in equity. In addition to any other remedies available to CITY at law, in equity or under this Agreement in the event of any breach of this Agreement by CONTRACTOR, CITY, in its sole and absolute discretion, may also avail itself of any one or more of the following remedies:
    - a. The termination of this Agreement and the rights and privileges set forth herein, upon CITY's issuance of written notice specifying the effective date of such termination; and/or
    - b. Specific performance of any one or more of the provisions of this Agreement, declaratory relief and/or injunctive relief.
  8. Concurrent with, or as an alternative to, CITY's initiation of the Default Notice process, CITY may also suspend CONTRACTOR's performance under this Agreement and the rights and privileges conferred hereunder for one (1) or more days, under any of the grounds set forth under subsections C and D of this section, pending the cure of an Event of Default, the termination of this Agreement for cause or convenience or pending CITY's exhaustion of any other rights or remedies available to it under this Agreement, at law or inequity. Nothing in this subsection shall operate to prohibit or otherwise restrict the ability of CITY to commence proceedings to pursue the termination of this Agreement either for cause or convenience during any suspension period.
  9. Neither the suspension of this Agreement nor the termination of this Agreement for convenience or cause shall operate to relive CONTRACTOR of its obligation to comply with all applicable laws governing the towing and secure storage of vehicles in its possession, including but not limited to laws relating to the release of vehicles to persons whose vehicles are in CONTRACTOR's possession. This obligation shall survive the termination of this Agreement under any circumstance and shall remain operative during any suspension period.
- K. Equipment, Materials and Services:
1. CONTRACTOR shall either possess or be able to obtain the services or use of a Class "D" tow truck at all times during the term of this AGREEMENT.
  2. In no case shall any tow vehicle dispatched by CONTRACTOR be rated at less than one ton capacity. CONTRACTOR shall dispatch tow vehicles of a sufficient rated capacity in order to handle all vehicle types and sizes referenced on the "Rate Schedule." Each vehicle shall be maintained in compliance with the provisions of Sections 24605, 25253, 27700 and 27907 of the VEHICLE CODE.
  3. All equipment, materials, or services furnished under this AGREEMENT shall be in complete compliance with presently existing and enforceable Federal, State, County and local Municipal regulations, standards, laws, ordinances, and statutes in any manner affecting performance and pricing under this AGREEMENT.
  4. All equipment, materials, or services furnished under this AGREEMENT shall be in good working order and must meet or exceed specification requirements and current established noise limitations for specific equipment, materials, or services being furnished under this AGREEMENT.
  5. CONTRACTOR shall arrange with the POLICE DEPARTMENT for the inspection of any and all new or replaced tow vehicles prior to placing said vehicles in service.

- L. Accounting, Audits and Access and Retention of Records:



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1. CONTRACTOR shall maintain at its primary place of business any records of all services furnished under this AGREEMENT including any books, documents, papers, invoices, or other records setting forth the description of vehicles, nature of service, and time and location of tow and/or storage service calls. Such records may be inspected at any time during normal business hours by CITY. In the event CITY requests copies of such records, CONTRACTOR shall furnish the records to CITY within five (5) working days of such request.
2. CONTRACTOR shall also keep accurate records of all gross receipts earned as a result of the business conducted under this AGREEMENT and such records shall be provided to the CITY as part of CONTRACTOR's annual business license renewal for purposes of accurately calculating CONTRACTOR's annual business license taxes.
3. CONTRACTOR shall provide receipts issued to all customers and maintain all records relating to its operations including, but not limited to, receipt slips, cash register tapes, invoices or other pertinent information. All charges, fees, and receipts shall be recorded by means of cash registers which shall be equipped with devices which lock in the totals. CONTRACTOR shall read and record the totals at the beginning and end of each calendar day. Such records must be available at all times and shall be subject to inspection, review, and audit during the entire term of this AGREEMENT by the CONTRACT ADMINISTRATOR, the CITY Finance Director, or his/her representative. Such audits may be conducted at the discretion of the CONTRACT ADMINISTRATOR or the Finance Director either unannounced or by appointment without the necessity of subpoena. CONTRACTOR's failure to maintain the records required by this AGREEMENT including, but not limited to, all gross receipts immediately available for audit shall be cause for immediate termination of this entire AGREEMENT by CITY without notice.
4. "Gross receipts" is defined as all revenues received from tow and related services, storage, lien sales, salvage sales of abandoned or unclaimed vehicles, plus incidental receipts earned by CONTRACTOR as a result of business conducted under this AGREEMENT. All charges shown on invoices and other records are to be explicit in detail thereby explaining the reason for the amount specified therein.
5. At the request of the POLICE DEPARTMENT, CONTRACTOR shall furnish to the POLICE DEPARTMENT, within five (5) working days of such request, a written list of all vehicles that have been towed by the CONTRACTOR under this AGREEMENT. Such list shall indicate the police case number, the date of tow, the storage location of each vehicle if applicable, dates of storage if applicable, and the vehicle make, model, license number, vehicle identification number, and the name of the owner if determined.
6. On a monthly basis, CONTRACTOR shall provide to CITY a written summary of all vehicles stored pursuant to this AGREEMENT including, but not limited to, the police case number, the date of tow, the storage location of each vehicle, dates of storage, and the vehicle make, model, license number, vehicle identification number, and the name of the owner if determined. Each such report shall be due within \_\_\_\_ days from the recently concluded month.
7. CONTRACTOR shall, within twenty four (24) hours of receipt of complaints, submit to the POLICE DEPARTMENT written notification of any complaints made to CONTRACTOR regarding the performance of its tow and storage services, or concerning the rates, charges or fees, or any claims or legal actions filed, delivered, or served upon or instituted against CONTRACTOR or any of its agents, officers or employees.

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8. CONTRACTOR shall maintain all records referenced herein for at least three (3) years after the final payment and all other pending matters are closed. Nothing in this requirement shall be construed to diminish, in any way, CITY's right to conduct an audit pursuant to this Section.

### M. Faithful Performance Bond:

1. CONTRACTOR shall furnish a Performance Bond substantially in the form as that attached hereto and incorporated herein by this reference as Exhibit "C," in the amount no less than Fifty Thousand Dollars (\$50,000).
2. CONTRACTOR shall maintain the validity and enforceability of the Performance Bond for the duration of this AGREEMENT, including any extensions should the option to extend, if any, be exercised. The Performance Bond shall be issued by a surety company licensed to conduct business in the State of California.

### N. Insurance Requirements:

1. CONTRACTOR, at CONTRACTOR's own cost and expense, shall procure and maintain during the including, but not limited to, insurance required pursuant to VEHICLE CODE Section 16500.5 and the following:
  - a. CONTRACTOR shall maintain worker's compensation insurance as required by the State of California and employers liability insurance with limits of \$1,000,000. In addition, CONTRACTOR shall require each subcontractor, if any, to similarly maintain worker's compensation insurance and employer's liability insurance in accordance with the laws of the State of California for all of the subcontractor's employees. If any class of employees employed by CONTRACTOR pursuant to this AGREEMENT is not protected by the California State Worker's Compensation Law, CONTRACTOR shall provide adequate insurance for the protection of such employees to the satisfaction of the CITY. This provision shall not apply if CONTRACTOR has no employees performing work under this AGREEMENT. CONTRACTOR agrees to waive its statutory immunity under any worker's compensation or similar statute, as respecting the CITY, and to require any and all subcontractors and any other person or entity involved in the services required in this AGREEMENT to do the same.
  - b. CONTRACTOR shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate for bodily injury, personal injury and property damage. CONTRACTOR shall maintain insurance on an occurrence, not claims-made basis. CONTRACTOR acknowledges and agrees that, for purposes of clarification with the intention of avoiding gaps in coverage with any umbrella or excess coverage, personal and advertising injury coverage shall be triggered by an "offense" while bodily injury and property damage coverage shall be triggered by an "occurrence" during the policy period.
  - c. CONTRACTOR shall maintain automobile liability insurance covering bodily injury, personal injury and property damage for all activities of the CONTRACTOR arising out or of in connection with the work to be performed under this AGREEMENT, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence.
  - d. CONTRACTOR shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise

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from CONTRACTOR's services, whether such services are performed by CONTRACTOR or by its employees, subcontractors, or sub-consultants. The amount of this insurance shall not be less than one million dollars (\$1,000,000) per claim.

- e. CONTRACTOR shall maintain On Hook Physical Damage Liability Insurance with limits not less than \$150,000 per vehicle.
2. Unless otherwise specified hereunder, each insurance policy required herein shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:
  - a. Except for worker's compensation, errors and omissions, professional liability or directors and officers coverage, the CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers to be named and covered as additional insured's with respect to liability arising out of work performed by or on behalf of the CONTRACTOR, including materials, parts or equipment furnished in connection with such work or operations.
  - b. This policy shall be considered primary insurance as respects the CITY, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the CITY, including any self-insured retention the CITY may have shall be considered excess insurance only and shall not contribute with it.
  - c. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
  - d. The insurer waives all rights of subrogation against the CITY, its elected or appointed officials, officers, employees or agents.
  - e. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its elected or appointed officers, officials, employees, agents or volunteers.
  - f. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the CITY.
3. Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the CITY's option, CONTRACTOR shall demonstrate financial capability for payment of such deductibles or self-insured retentions.
4. CONTRACTOR shall provide certificates of insurance with original endorsements to the CITY as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the CITY on or before commencement of performance of this AGREEMENT. Current certification of insurance shall be kept on file with the CITY at all times during the term of this AGREEMENT.
5. Provided the CITY gives its written consent for any persons other than CONTRACTOR to perform any part of the services required in this AGREEMENT, CONTRACTOR agrees to require that all parties with whom CONTRACTOR enters into contracts or whom CONTRACTOR hires or retains pursuant to or in any way related to the performance of this AGREEMENT, provide the insurance coverage required herein, at minimum, and name as additional insured's the parties to this AGREEMENT. CONTRACTOR agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Section.
6. In the event this AGREEMENT is terminated for any reason prior to the completion of all

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obligations and requirements of this AGREEMENT, CONTRACTOR agrees to maintain all coverages required herein until the CITY provides written authorization to terminate the coverages following the CITY's review and determination that all liability posed under this AGREEMENT as to the party providing insurance has been eliminated.

7. CONTRACTOR agrees and acknowledges that if it fails to obtain all of the insurance required in this AGREEMENT in accordance with the requirements herein, or to obtain and ensure that the coverage required herein is maintained by any subcontractors or others involved in any way with the performance of services, to the extent such is permissible under this AGREEMENT, CONTRACTOR shall be responsible for any losses, claims, suits, damages, defense obligations, or liability of any kind or nature attributable to the CITY or its officers, employees, servants, volunteers, agents and independent contractors. CONTRACTOR further acknowledges understand and agrees that the failure to maintain all required insurances shall constitute an Event of Default under this Agreement and CITY reserves the right to immediately suspend this Agreement pending the cure and/or terminate this Agreement the failure to procure insurance is not timely cured.

### O. Hold Harmless/Indemnification:

1. CONTRACTOR shall defend, indemnify and hold harmless CITY and CITY's elected and appointed officials, officers its officers, officials, agents, employees and volunteers (collectively, the "CITY Indemnitees") from and against any and all claims, demands, actions, losses, damage, injuries, and liability, direct or indirect, (including any and all costs and expenses in connection therewith), arising out of the performance of this AGREEMENT by CONTRACTOR or CONTRACTOR's officers, employees, agents, contractors or volunteers, except for any such claim arising out of the sole negligence or willful misconduct of the CITY Indemnitees.
2. CITY does not, and shall not; waive any rights that it may have against CONTRACTOR under this section because of the acceptance by CITY, or the deposit with CITY, of any insurance policy or certificate required pursuant to this AGREEMENT. The hold harmless, indemnification and duty to defend provisions of this section shall apply regardless of whether or not said insurance policies are determined to be applicable to the claim, demand, action, damage, liability, loss, cost or expense described herein.

### P. Independent Contractor:

1. It is understood and agreed that CONTRACTOR is, and at all times shall be, an independent contractor and nothing contained herein shall be construed as making CONTRACTOR, or any individual whose compensation for services is paid by CONTRACTOR, an agent or employee of CITY, or authorizing CONTRACTOR to create or assume any obligation or liability for or on behalf of CITY.
2. As an independent contractor pursuant to the terms of this AGREEMENT, CONTRACTOR shall assume all legal and financial responsibility for taxes, FICA, requirement of overtime, and all other factors relating to an independent contractor, and CONTRACTOR hereby agrees to indemnify, defend, save, and hold CITY, its agents, assignees, and employees harmless from any and all loss, costs including attorney fees, and damages of any kind relating to such matters.

## Section 6: AUTHORITY OF CITY

### A. Two Company Alternate Call Basis:

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1. CITY shall request towing service by CONTRACTOR on a rotation/alternate basis between CONTRACTOR and one other towing company. CITY, at its sole discretion, reserves the right to place a request for towing or storage service out of rotation under any one of the following circumstances:
  - a. During the period of time in which any Event of Default remains uncured;
  - b. If CONTRACTOR is unable to respond to a call within the time called for under this Agreement;
  - c. If CONTRACTOR is unable to respond to a call with the necessary equipment required under the circumstances.

### B. Retention of Documents by CITY:

1. All information, documents, plans, drawings, records, or similar materials submitted to CITY in response to the Request for Proposals or as a part of this complete AGREEMENT are and shall remain irrevocably the property of CITY.

### C. Contract Performance:

1. Subject to the power and authority of CITY, as provided by law and in accordance with this AGREEMENT, CITY shall in all cases determine the quantity, quality, and acceptability of the services provided under this AGREEMENT. CITY shall decide any questions which may arise relative to the fulfillment of this AGREEMENT or to the obligations of the CONTRACTOR hereunder.

## Section 7: RELATIONSHIP OF PARTIES

- A. It is understood and agreed that nothing in this AGREEMENT is intended, nor should be construed in any way to create or to establish the relationship of co- partners or lessor-lessee between the parties hereto. CONTRACTOR does not receive any leasehold estate or other right of possession pursuant to this AGREEMENT.

## Section 8: NON-LIABILITY OF CONTRACTOR

- A. If performance of this AGREEMENT shall be delayed or suspended and if such failure arises out of causes beyond the control of and without fault or negligence of CONTRACTOR, CONTRACTOR shall notify CITY in writing and within twenty- four (24) hours after the delay that said performance shall be delayed or suspended.
- B. Such causes of delay or suspension of performance by CONTRACTOR beyond CONTRACTOR's control as referenced in Section 6(E)(2)(e) herein may include, but are not limited to: acts of God; war; acts of the public enemy; acts of any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; strikes; and unusually severe weather.
- C. CITY shall ascertain the facts and extent of such failure and, if CITY determines that the failure was occasioned by excusable causes, CITY will not claim that CONTRACTOR is in default and that this AGREEMENT has been breached.

## Section 9: NOTICES

- A. Any and all notices to be provided pursuant to this AGREEMENT shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or

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- registered, return receipt requested, with postage prepaid.
- B.

### Section 10: ENTIRE AGREEMENT

- A. This AGREEMENT supersedes any and all other agreements, either oral or written, between the CITY and CONTRACTOR with respect to the subject matter of this AGREEMENT.
- B. This AGREEMENT contains all of the covenants and agreements between the parties with respect to the subject matter of this AGREEMENT, and each party to this AGREEMENT acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any party except those covenants and agreements embodied in this AGREEMENT.
- C. No agreement, statement, or promise not contained in this AGREEMENT shall be valid or binding.

### Section 11: INTERPRETATION

- A. This AGREEMENT was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that one of the parties was solely responsible for preparing the AGREEMENT or caused the AGREEMENT to be prepared.

### Section 12: SEVERABILITY

- A. If any one or more of the sentences, clauses, paragraphs or sections contained herein is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this AGREEMENT and shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein.

### Section 13: GOVERNING LAW

- A. The validity of this AGREEMENT and any of its terms or provision, as well as the rights and duties of the parties under this AGREEMENT, shall be construed pursuant to and in accordance with California Law.

### Section 14: VENUE

- A. All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this AGREEMENT and all proceedings involving any enforcement action related to this AGREEMENT shall be initiated and conducted in the applicable court or forum in Los Angeles County, California.
- B.

### Section 15: ATTORNEYS FEES

- A. In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this AGREEMENT or as a result of any alleged breach of any provision of this AGREEMENT, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.



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### **Section 16: AUTHORITY**

- A. The persons executing this AGREEMENT on behalf of the parties hereto warrant that they are duly authorized to execute this AGREEMENT on behalf of said parties.

### **Section 17: COUNTERPARTS**

- A. This AGREEMENT may be executed in several counterparts.

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Template Towing Services Agreement

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IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first set forth above.

### APPROVED:

**CITY OF EL MONTE**

**CONTRACTOR**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

### APPROVED AS TO FORM:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Template Towing Services Agreement

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Template Towing Services Agreement